

Internal Revenue Service

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Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-119138-09

Date:

July 22, 2009

X =

State =

A =

Trust =
1

Trust =
2

Trust =
3

Trust =
4

Trust =
5

Trust =
6

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to a letter dated April 3, 2009, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on Date 1. X made an election to be treated as an S corporation effective Date 2. On Date 3, A, the principal shareholder of X, transferred certain shares of X each to Trust 1, Trust 2, and Trust 3. Under the terms of the trust instruments, Trust 1, Trust 2, and Trust 3 did not qualify as qualified subchapter S trusts (QSSTs) under § 1361(d). X represents that the assets of Trust 1, Trust 2, and Trust 3, including their shares in X, will be transferred to Trust 4, Trust 5, and Trust 6, respectively, upon the grant of relief under § 1362(f). Under the terms of the trust instruments, Trust 4, Trust 5, and Trust 6 qualify as QSSTs, and QSST elections for these trusts, which already hold X stock, were timely made.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X further represents that from Date 2, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation on Date 3 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided X's S

corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

This ruling is conditioned upon the transfer of the shares in X from Trust 1, Trust 2, and Trust 3 to Trust 4, Trust 5, and Trust 6, respectively, within 60 days from the date of this ruling. If X or its shareholders fail to satisfy this condition, this ruling is null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed as to whether Trust 4, Trust 5, and Trust 6 qualify as QSSTs.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc: